

PART IV

Section 2-C—(ii)

**STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT
UNDER THE CENTRAL ACTS AND STATE ACTS.**

GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR)

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Sri Basheer Ahmed, No. 1; Miller Tank Road, Bangalore-1.

Award of the Labour Court, Bangalore—Published.

Read the following papers :—

(1) Letter No. 823/67-68, dated 25th October 1967 from Sri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

**BEFORE THE PRESIDING OFFICER, LABOUR COURT,
BANGALORE.**

Dated this 25th day of October 1967.

Present :

Sri P. T. Kadkol, B.Sc., LL.B.

... *Presiding Officer.*

Reference No. 19 of 1967.

Smt. Arleen Ottaman, 13/A, Asoka Road, Cooks Town,
Bangalore-5.

... *First Party.*

Vs.

The Management of Sri Basheer Ahmed, No. 1 Miller
Tank Road, Bangalore-1.

... *Second Party.*

Reference : Government Order No LMA 66 LLD 67, dated 15th
February 1967.

AWARD

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of Sri Basheer Ahmed, Bangalore have referred it to this Court for adjudication under Section 10 (1) (c) of the Industrial Disputes Act, 1947, by their Order No. LMA 66 LLD 67, dated 15th February 1967, setting out the following points of dispute for adjudication:—

“Is Sri Basheer Ahmed, Proprietor of Azras Poultry Equipment, No.1 Millor Tank Bund Road, Bangalore-1 justified in terminating the services of the typist Miss Arleen Ottman? If not, what is the relief Miss Arleen Ottman, 12/A, Asoka Road, Cooks Town, Bangalore-5 is entitled to?”

2. The aggrieved worker in the case is Miss Arleen Ottman. The dispute relates to the alleged termination of her service by “Sri Basheer Ahmed, Proprietor of Azras Poultry Equipment, Bangalore.” This Reference has been made by the Government, presumably, under Section 2A of the Industrial Disputes Act, read with Section 10 (1) (c) thereof, since her cause has not been sponsored by any Trade Union and it is also not known whether the other workers or any of them, in the Establishment, have supported her cause.

3. She has put in the statement of her claims, dated 18th March 1967. She has described herself as the First Party. Then she has mentioned the Second Party to be “The Management, Shri Basheer Ahmed No. 1 Miller Tank Bund Road, Bangalore-1.” The averments made by her, therein, are these:—

The Second Party appointed her as a Typist on 1st December 1965, on a salary of Rs. 100/- p.m. telling her that the appointment was permanent; she worked till 15th June 1966; on that day, she was told by the Second Party, Mr. Basheer Ahmed that as he was going to Bombay and from there to Mauritius to leave his daughter there, she need not attend office for 15 days; hence she did not attend office till 30th June 1966; on 1st July 1966, she went to the office to resume her duty; she however found another typist working there; then Basheer Ahmed and his wife told her that her services had been terminated; this termi-

nation is unjust and illegal; hence the Management should be directed to reinstate her in her former post with full back wages and continuity of service, etc.

4. Since Basheer Ahmed was specifically mentioned as the proprietor of the Establishment, notice was issued to him to submit his statement of objections. On 5th April 1967 he submitted his written objections, as under:—

He is not running any industrial concern; he had employed Arleen Ottmann as a part-time typist for his personal work, with effect from 1st March 1966; but she left the job voluntarily; the dispute referred, is not an Industrial Dispute and Arleen Ottmann is not a "workman" as defined in the Industrial Disputes Act; hence this Reference should be rejected, etc.

5. After the above statement of objections was submitted, I directed the issue of notice to the Management of Azras Poultry Equipment, along with a copy of the claim statement, calling upon it, to submit its objections, if any. In response thereto, Mrs Zainab Basheer (wife of Basheer Ahmed) appeared as the proprietress of Azras Poultry Equipment and submitted her statement of objections, dated 15th July 1967. The contentions raised by her are these:—

She is the proprietress of the Azras Poultry Equipment; this Establishment had never employed Arleen Ottmann in any capacity; she had been employed by Basheer Ahmed for his private work, unconnected with the Establishment; hence she can not have any cause of action against the Establishment and therefore, this Reference should be rejected, etc.

6. On these pleadings, the following issues have been framed (*Vide* Order sheet dated 24th July 1967) and set down for hearing:—

1. Does Miss Arleen Ottmann prove that she was employed by the Second Party the Azras Poultry Equipment, Bangalore?
2. Who is the owner of the Azras Poultry Equipment Basheer Ahmed or Zainab Basheer?
3. Does Miss Arleen Ottmann prove that she has been dismissed from service or employment has been refused to her?

4. Is she entitled to reinstatement with or without back wages?

5. What Award?

The parties were asked to lead evidence on these issues. Arleen Ottmann has examined herself (W. W. 1) and closed her case. Basheer Ahmed has examined himself as M. W. 1. Nissar Ahmed, the son of Basheer Ahmed and Zainab Basheer, has examined himself as M. W. 2. Nine documents produced by him have been marked Exts. M. 1 to M. 9. This is all the evidence in the case and I now proceed to discuss it.

7. This is a very peculiar case. Admittedly, there is one Establishment known as "Azras Poultry Equipment," at Bangalore. It is a factory, which manufactures poultry equipment. It is housed in the premises bearing No. 1, Miller Tank Bund Road, Bangalore. There is also a Bungalow on the premises and in that Bungalow stay, Basheer Ahmed, his wife Zainab Basheer and their son, Nissar Ahmed. Basheer Ahmed has stated that the Bungalow belongs to his wife, she having purchased it. The factory is stated to have been started about 8 years back. The factory has been registered and the licence therefor has been issued, in the name of Zainab Basheer (*vide* Ex. M. 3)

8. Basheer Ahmed has stated that he has no interest either in the factory or in its Management. He claims to own some shops and get rent from them. From his statement, it does not appear that he is doing anything else. Even then, he has stated:—

"I had employed Arleen Ottmann to do my personal typing work, consisting of typing my letters. I write 2-3 letters, a day. For typing these 2-3 letters I had employed Arleen. ... She has not done any work for the Second Party factory. Arleen was my personal employee. I do not take any part in the Management or affairs of the second party factory. It is true that my wife is a paradanishin lady. She has appointed Nissar Ahmed as Manager and gets work done from him..."

9. Nissar Ahmed has given his age as 22 years. He has stated that he and his parents live together and that the factory belongs to his mother. Then he has stated

that he has been appointed by his mother as the Manager of the factory on a salary of Rs. 150 per month and that he has been working as Manager since the last four years. As regards Arleen Ottmann he has stated that he had seen her working with his father and has added that his father does not take any part in the management of the factory. Then with regard to the factory, he has stated :—

“In the factory, we have not employed any typist. There is one typewriter in the factory. It belongs to the factory. The factory has to do some typing work also. Either I do the typing or my mother does it. My father uses the factory typewriter for his private correspondence. It was on this very typewriter that Arleen was doing typing work, when employed by my father.....The typing work of the factory per month would be about 50 pages consisting of 30 to 40 letters..... My mother, my father and myself do not know the “touch system” of typewriting and follow the “hunt and peck” method.”

10. On the other hand Arleen Ottmann has stated that she was doing the typing work of the factory. The question now is, which of the two rival versions should be believed.

11. It may be that the Factory has been registered in the name of Smt. Zainab Basheer. When she, her husband and son (a boy of 22) are living together, under one roof and the factory also is being run on the same premises, it is very difficult to believe that Sri Basheer Ahmed does not take any part in the Management of the Factory, more especially when, Smt. Zainab Basheer is a paradanishin lady, and Nissar Ahmed is so young. Running a factory and dealing with the workmen employed therein, is not a very easy job. When Basheer Ahmed aged 48 years, presumably having sufficient experience is available, it is but natural to expect him to look after the management of the factory in preference to Nissar Ahmed. Moreover, besides the interested testimony of the father and the son, there is no independent evidence to show that Nissar Ahmed is really the Manager of the Factory. No correspondence of the factory, wherein Nissar Ahmed has signed as Manager, has been produced before me to vouch the truth of the statement. The probabilities that Basheer Ahmed must be taking part and that too an active part in the Management of the Factory, are very high.

12. Then we find that Mr. Basheer Ahmed needs a typist for typing 2 or 3 letters a day, if we are to accept his word. In this context, it is hard to believe that the factory, which has an equal number of letters, if not more, to type does not require a typist. According to Nissar Ahmed, his mother can type, his father can type and he too can type. Also according to him, his father was doing his own typing work before employing Arleen Ottmann and has also been doing it, after she left. Then there is only one typewriter and it belongs to the factory and it was on this typewriter that Arleen Ottmann used to work. In the face of these facts stated by Nissar Ahmed it is very difficult and almost impossible to believe that Arleen was not doing the typing work of the factory and was not employed for the purpose of doing the typing work of the factory. It should not have been very difficult for the Second Party to prove that Arleen Ottmann was not doing the typing work of the factory. If some correspondence emanating from the factory had been produced, it would have disclosed whether the typing work was made under the "touch-system" or the "hunt and peck" method. There would be a very remarkable distinction between the two, apparent even to a non-expert eye. If the typewritten work of the factory showed that it was not made by the "touch system" there would have been some scope for accepting the version of M. W. 1 and M. W. 2. As matters stand, there is none.

13. The Second Party however points out some documents to show that Arleen Ottmann was in the employ of Basheer Ahmed. The first is Ex. M. 1. It is a representation made by Arleen Ottman to the Labour Officer, Bangalore on 1st July 1966. Therein she has said that she was working with Basheer Ahmed and her service had been illegally terminated by him and his wife. In this letter, there is no mention of the Azras Poultry Equipment. When the Labour Officer called for the remarks of Basheer Ahmed, he has sent the reply dated 26th July 1966 and it is at Ex. M.2. He had said therein that Arleen Ottmann had been appointed as a part time typist purely on a temporary basis and she had quitted the job voluntarily and neither he nor his wife had informed her that her services were no longer required. He too has not referred to the Azras Poultry Equipment, in Ex. M.2. The documents at Exts. M. 4 to M. 9 are the attendance Registers and payment registers of the Establishment i. e., Azras Poultry Equipment. The name of Arleen Ottmann does not appear in them. On the basis of these documents, it is urged that Arleen

Ottmann cannot have been the employee in the Establishment. Taking first the documents at Exts. M.4 to M. 9, I do not think that the non-mention of Arleen Ottman's name in them, can be given any importance. Even the name of Nissar Ahmed does not appear in them. Still, he claims to be the monthly salaried Manager of the Establishment. The name of Arleen Ottmann might not have been mentioned in them because she was on the clerical establishment or for the very reasons, if any, for which Nissar Ahmed's name has not been mentioned in them. Then as regards Ex. M. 1 I, have already expressed my view that Basheer Ahmed must have been taking part in the Management of the Establishment. Admittedly Basheer Ahmed appointed Arleen Ottmann. That may be the reason why she has said in Ex. M.1 that she was working with Basheer Ahmed. Hence I cannot attach much importance to it. Considering all the facts and circumstances before me, I hold that Arleen Ottmann was appointed in the Establishment and record my finding on the first issue in the affirmative.

14. The second issue raises the question as to who is the owner of the Establishment. It may be that Smt. Zainab Basheer is the owner thereof as stated by M. W.1 and M. W.2. It is at least registered (*Vide* Ex. M.3) in the name of Smt. Zainab Basheer. In view of my finding on the first issue, it is immaterial as to who is the owner of the Establishment.

15. According to Arleen Ottmann, her service was terminated by Basheer Ahmed and his wife telling her on 1st July 1966 that her services were no longer required. According to Basheer Ahmed, one day he found that Arleen Ottmann had not filed the letters properly; when questioned by him, she told him that he might employ some one else if he was not satisfied with her work hence he paid her 15 days salary which was in arrears and asked her to go away (*Vide* para 3 of his deposition). In his written statement (para 1) he has said :—

“In fact the First Party, i. e., Miss Arleen Ottmann settled her amount on 15th June 1966 and abandoned from work subsequently.”

In his reply to the Labour Officer (*vide* Ex. M.2), he has said :—

“She settled her amount on 15th June 1966 and abandoned from work subsequently. She has left her service

voluntarily and abruptly on 15th June 1966 causing great inconvenience to the day-to-day typing."

The account given by Basheer Ahmed in his deposition before the court clearly shows that he paid Arleen Ottmann 15 days salary in arrears and asked her to go away. "Asking her to go away" cannot mean anything else than saying that her services were terminated. Hence I hold that employment was refused to her and record my finding on the third issue accordingly.

16. Now coming to the fourth issue, I find that Arleen Ottmann does not want reinstatement now. She has stated in her deposition :—

" I do not want to go back and work in the Second Party concern now, as they may again do me the same thing and send me away. I may be awarded compensation. I was out of job for one year. Suitable compensation may be awarded by the Court (*Vide* Para 4).

In face of this statement made by her, Arleen Ottmann need not be directed to be reinstated. I record my finding on the fourth issue accordingly.

17. The next question would be what Award should be made in the case. I have come to the conclusion that Arleen Ottmann has been refused employment. This refusal of employment is not justified. In other words, it is wrongful. Her appointment appears to be on temporary basis. Admittedly her salary per month was Rs. 100. In these circumstances, I think that Rs. 100 by way of notice pay and Rs. 100 as compensation,

on the lines of retrenchment would meet the ends of justice. Hence I make an Award as under :—

AWARD

Reference is accepted. The Second Party, which is the Management of Azras Poultry Equipment, Bangalore, is directed to pay a sum of Rs. 200 to Miss Arleen Ottmann in full settlement of all her claims. Parties do bear their own costs.

(Sd/-) P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

"COPY"

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

ORDER.

Bangalore, dated 6th November 1967.

S. O. 2190.—WHEREAS by State Government Order No. LMA 66 LLD 67; dated 15th February 1967, the Industrial Dispute between the Workmen and the Management of Sri Basheer Ahmed No. 1, Miller Tank Road, Bangalore-1, was referred to the Labour Court Bangalore for adjudication;

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. LMA 66 LLD 67.]

By Order and in the name of the Governor of Mysore,

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G. G. PUROHIT, *Under Secy.*